Finanzgruppe
Deutscher Sparkassen- und Giroverband

Cooperation between the ECB and NCAs within the SSM

Conference ‘Interim Balance: The European Banking Union‘, TU Berlin

Martin Switaiski, DSGV

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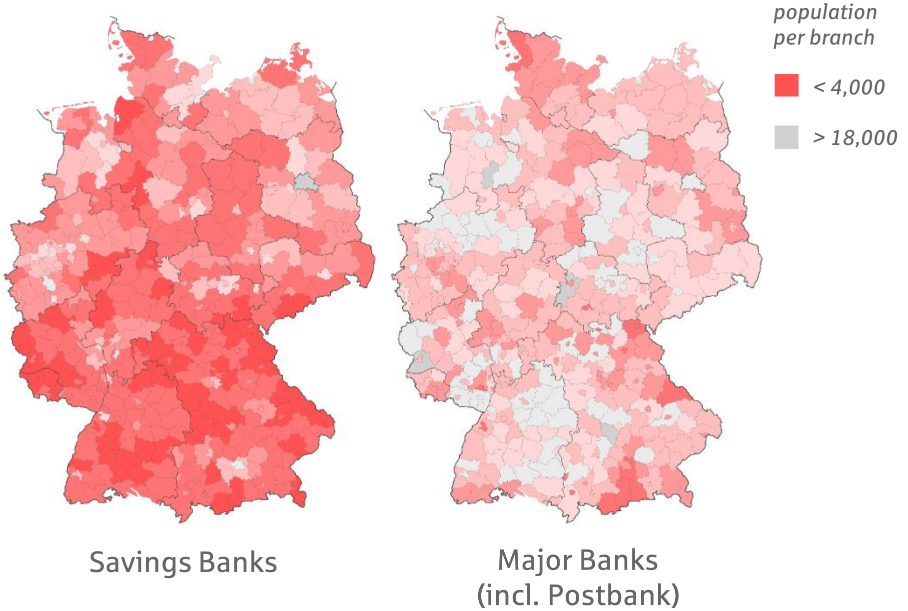
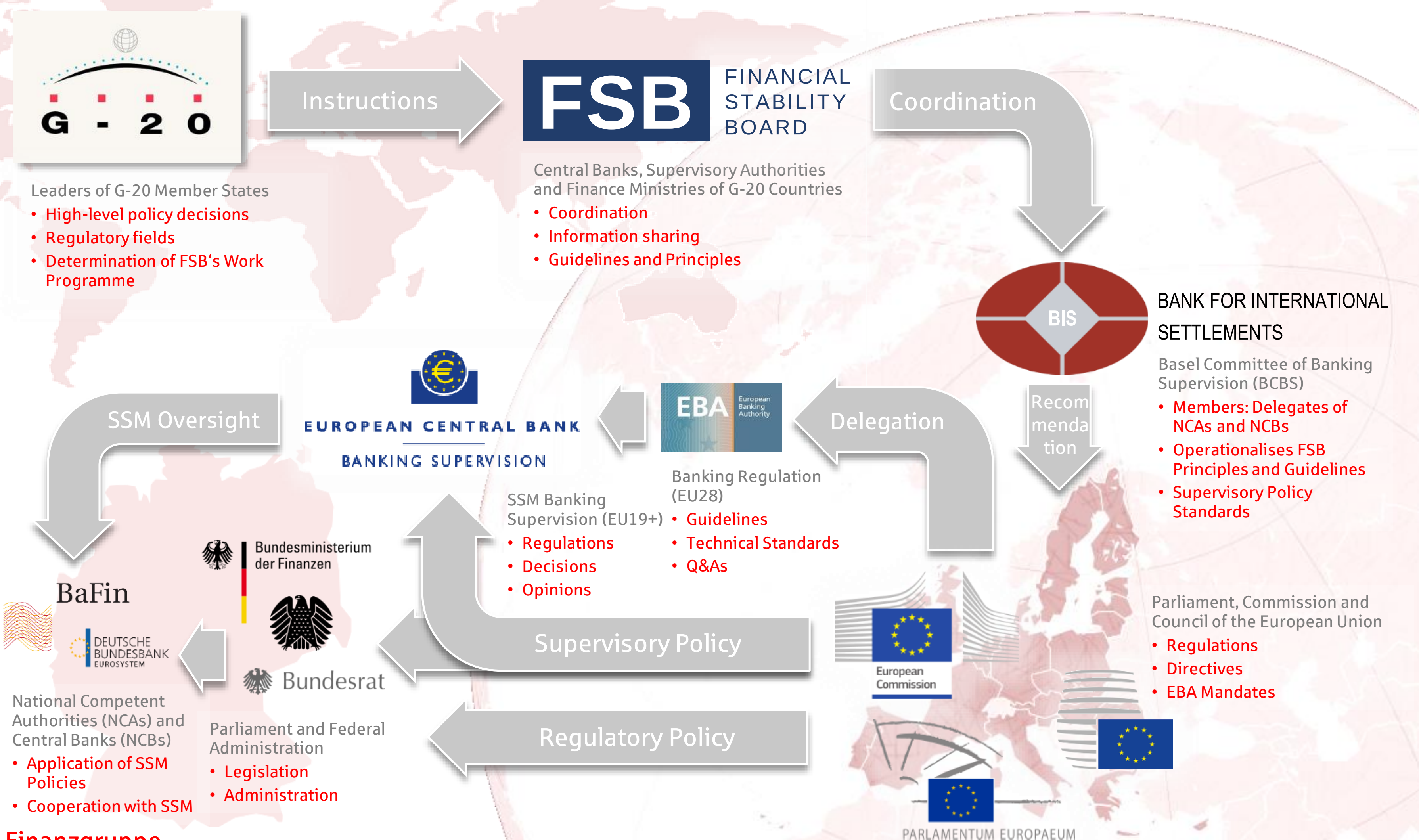
Savings Banks: Facts and Figures

413	Savings Banks
€ 1.1tn	Total Assets
244,038	Employees
15,095	Branches
19,054	Trainees
96.8mn	Savings, checking and securities accounts

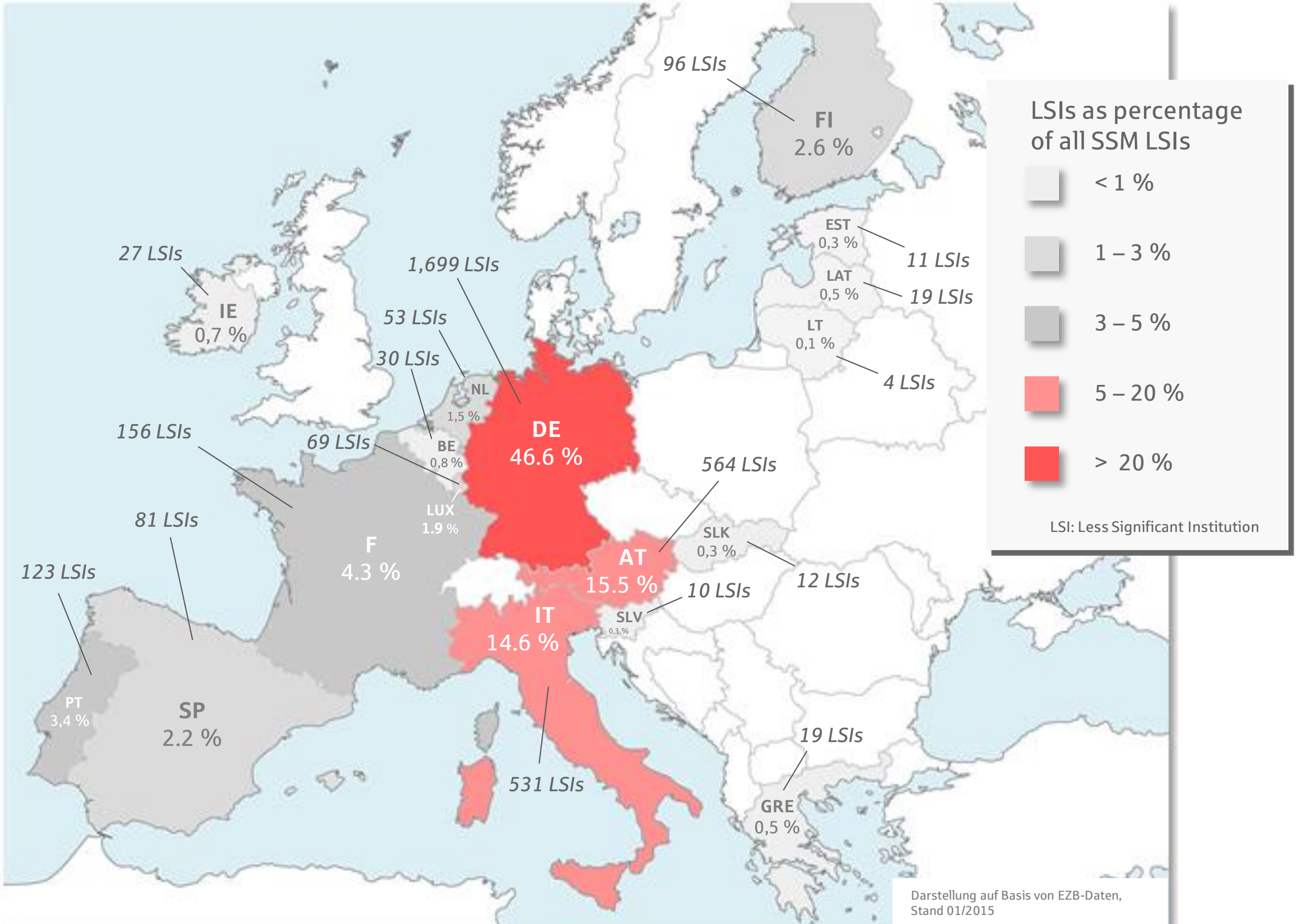
Regional density of branches *(population per branch in rural districts and towns not belonging to rural districts)*



Banking Regulation:
From the International Level to a National Level



Less Significant Institutions within the SSM: Geographical Distribution



The SSM: Profound Changes to the Supervisory Context

Observations after the SSM‘s first year:

- The ECB has made extensive use of the SSM‘s initial momentum
- SSM has made significant progress creating supervisory structures (e. g. Joint Supervisory Teams)
- Responsibilities of ECB (Supervision) and EBA (Regulatory Details) are not sufficiently differentiated
- Significant room for improvement of governance structures (Supervisory Board governance, separation of SSM and monetary policy)
- Need for institutionalised stakeholder involvement and proper consultation of SSM‘s policies

The supervisory context in Europe has changed profoundly with the introduction of the SSM. Despite the progress that has been made, there remains room for improvement.

The SSM Supervisory Manual

SSM Supervisory Manual

- ~2.000 pages, non-public
- detailed description of supervisory standards and cooperation within the SSM, adressed at ECB and NCA staff
- focus on supervisory processes
- Implementation of EBA's SREP Guidelines (Dec 2014)
- brief excerpt (~50 pages) published as „Guide to Banking Supervision" (available at www.bankingsupervision.europa.eu)

Supervisory Manual mainly targeted at SI supervision (LSI Manual to follow)

SSM Regulation (EU Council Regulation No. 1024/2013)

- published in the Official Journal of the EU on 29 October 2013
- legally based upon Article 127 (6) of the Treaty on the Functioning of the EU:

  “The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, ***confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions*** *and other financial institutions with the exception of insurance undertakings.”*

29.10.2013 EN Official Journal of the European Union L 287/63

COUNCIL REGULATION (EU) No 1024/2013

of 15 October 2013

conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Central Bank,

Acting in accordance with a special legislative procedure,

Whereas:

(1) Over the past decades, the Union has made considerable progress in creating an internal market for banking services. Consequently, in many Member States, banking groups with their headquarters established in other Member States hold a significant market share, and credit institutions have geographically diversified their business, within both the euro area and non-euro area.

(2) The present financial and economic crisis has shown that the integrity of the single currency and the internal market may be threatened by the fragmentation of the financial sector. It is therefore essential to intensify the integration of banking supervision in order to bolster the Union, restore financial stability and lay the basis for economic recovery.

(3) Maintaining and deepening the internal market for banking services is essential in order to foster economic growth in the Union and adequate funding of the real economy. However this proves increasingly challenging. Evidence shows that the integration of banking markets in the Union is coming to a halt.

(4) At the same time, in addition to the adoption of an enhanced Union regulatory framework, supervisors must step up their supervisory scrutiny to take account of the lessons of the financial crisis in recent years, and be able to oversee highly complex and inter-connected markets and institutions.

(5) Competence for supervision of individual credit institutions in the Union remains mostly at national level. Coordination between supervisors is vital but the crisis has shown that mere coordination is not enough, in particular in the context of a single currency. In order to preserve financial stability in the Union and increase the positive effects of market integration on growth and welfare, integration of supervisory responsibilities should therefore be enhanced. This is particularly important to ensure a smooth and sound overview over an entire banking group and its overall health and would reduce the risk of different interpretations and contradictory decisions on the individual entity level.

(6) The stability of credit institutions is in many instances still closely linked to the Member State in which they are established. Doubts about the sustainability of public debt, economic growth prospects, and the viability of credit institutions have been creating negative, mutually reinforcing market trends. This may lead to risks to the viability of some credit institutions and to the stability of the financial system in the euro area and the Union as a whole, and may impose a heavy burden for already strained public finances of the Member States concerned.

(7) The European Supervisory Authority (European Banking Authority) (EBA), established in 2011 by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), [1], and the European System of Financial Supervision (ESFS) established by Article 2 of that Regulation, and Article 2 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) [2] (EIOPA) and Article 2 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) [3] (ESMA) have significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for financial services in the Union, and has been crucial in implementing in a consistent way the recapitalisation agreed by the euro Summit of 26 October 2011 of major Union credit institutions, consistent with the guidelines and conditions relating to State aid adopted by the Commission.

(1) OJ L 331, 15.12.2010, p. 12.
(2) OJ L 331, 15.12.2010, p. 48.
(3) OJ L 331, 15.12.2010, p. 84.

Article 6 (1) and (2) SSM Regulation: Principal Responsibilities of ECB and NCAs

Article 6 SSM Regulation

1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities. **The ECB shall be responsible for the effective and consistent functioning of the SSM.**

2. Both the ECB and national competent authorities shall be subject to a duty of **cooperation in good faith**, and an obligation to exchange information.

Without prejudice to the ECB's power to receive directly, or have direct access to information reported, on an ongoing basis, by credit institutions, **the national competent authorities shall in particular provide the ECB with all information necessary** for the purposes of carrying out the tasks conferred on the ECB by this Regulation.

- ECB responsible for functioning of SSM
- Duty to cooperate ‘in good faith‘
- NCA‘s obliged to provide ECB with all necessary information

Article 6 (3) SSM Regulation

Article 6 (3) SSM Regulation

Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by this Regulation, **national competent authorities shall be responsible for assisting the ECB,** under the conditions set out in the [framework regulation] […].

They shall follow the instructions given by the ECB when performing the tasks mentioned in Article 4.

- NCAs responsible for assisting ECB under conditions of SSM framework regulation
- NCAs shall follow ECB's instructions when performing its tasks

Article 6 (5) SSM Regulation: ECB Oversight and Intervention Rights in LSI Supervision

Article 6 (5) SSM Regulation

[…]

(a) **the ECB shall issue regulations, guidelines or general instructions to [NCAs],** according to which the tasks […] are performed and supervisory decisions are adopted by [NCAs]. […]

(b) when necessary to ensure consistent application of high supervisory standards, **the ECB may at any time, on its own initiative after consulting with [NCAs], decide to exercise directly itself all the relevant powers for one or more credit institutions** […];

(c) **the ECB shall exercise oversight** over the functioning of the system ,[…]

(d) **the ECB may at any time make use of the powers referred to in Articles 10 to 13**;

(e) **the ECB may also request, on an ad hoc or continuous basis, information from the [NCAs]** on the performance of the tasks carried out by them under this Article.

- ECB to issue regulations, guidelines and instructions to NCAs
- ECB is authorised to assume supervision over individual LSIs at any time „to ensure […] high supervisory standards“
- ECB to exercise oversight function
- ECB has right to use powers of Articles 10 to 13 (e.g. on-site inspections)
- far-reaching information rights regarding NCAs‘ performance

Article 6 (6): NCAs‘ Responsibilities

Article 6 (6) SSM Regulation

Without prejudice to paragraph 5 of this Article, **[NCAs] shall carry out and be responsible for the tasks** referred to in points (b), (d) to (g) and (i) of Article 4(1) and **adopting all relevant supervisory decisions with regard to [LSIs],** within the framework and subject to the procedures referred to in paragraph 7 of this Article.

Without prejudice to Articles 10 to 13**, the [NCAs] and national designated authorities shall maintain the powers, in accordance with national law, to obtain information from credit institutions**, holding companies, mixed holding companies and undertakings included in the consolidated financial situation of a credit institution and to perform on site inspections at those credit institutions, holding companies, mixed holding companies and undertakings. **The [NCAs] shall inform the ECB** […], of the measures taken pursuant to this paragraph and closely coordinate those measures with the ECB.

The [NCAs] shall report to the ECB on a regular basis on the performance of the activities performed under this Article.

- NCAs shall maintain powers in accordance with national law regarding information requests and on-site inspections
- NCAs obliged to inform the ECB of any measures taken and to report regularly on performance of measures

Article 9 SSM Regulation (Chapter III: Powers of the ECB)

Article 9 Supervisory and investigatory powers

1. For the exclusive purpose of carrying out the tasks conferred on it by Articles 4(1), 4(2) and 5(2), **the ECB shall be considered, as appropriate, the competent authority or the designated authority in the participating Member States as established by the relevant Union law.**

For the same exclusive purpose, the ECB shall have all the powers and obligations set out in this Regulation. It shall also have all the powers and obligations, which competent and designated authorities shall have under the relevant Union law, unless otherwise provided for by this Regulation. In particular, the ECB shall have the powers listed in Sections 1 and 2 of this Chapter.

To the extent necessary to carry out the tasks conferred on it by this Regulation, the ECB may require, by way of instructions, those national authorities to make use of their powers, under and in accordance **with the conditions set out in national law**, where this Regulation does not confer such powers on the ECB. Those national authorities shall fully inform the ECB about the exercise of those powers.

- ECB considered as Competent Authority for the exclusive purpose of carrying out tasks related to microprudential supervision (Art. 4 (1) and (2)) as well as setting higher systemic capital buffers (Art. 5 (2)).
- ECB may require national authorities to make use of their powers

Article 12 SSM Regulation: On-Site Inspections

Article 12

On-site inspections

1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, **the ECB may in accordance with Article 13 and subject to prior notification to the [NCA] concerned conduct all necessary on-site inspections** at the business premises of the legal persons referred to in Article 10(1) and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1). Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement to those legal persons.

- ECB is given permanent right to conduct on-site inspections
- Can be interpreted as 'right to step in whenever necessary'

Conclusions / Points for Discussion

- ECB is given extensive rights and competences vis-a-vis NCAs
- NCA competence is limited by
  - Common procedures
  - ECB right to assume supervision of LSIs at any time
  - ECB instruction rights

- **How can supervisory governance be improved at the SSM level ?** (decision-making processes, separation of supervision and monetary policy)
- **How will the relationship between ECB and EBA develop ?**
- **How to improve transparency of supervisory policies and standards ?**

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Martin Switaiski

Senior Adviser
European Banking Super-
vision / Representative to
ECB and EBA

London Liaison Office
53-54 Grosvenor Street
Mayfair, London W1K 3HU
Phone +44 20 7645-9076
Mobile +49 151 508 544 85
martin.switaiski@dsgv.de